



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice  
QC – 09 – 09

October 19, 2009

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **SIREA, Inc. (formerly known as AERIS, Inc.) Settlement**

Attached is a stipulated final judgment issued by the District Attorney's Office of Santa Cruz County, in conjunction with the District Attorney's Offices of Santa Barbara, Santa Clara, and Sonoma Counties. A Final Judgment and Injunction against SIREA, Inc, formerly AERIS was filed on September 29, 2009 for selling short measure industrial and medical cylinder gas, improper labeling of cylinders, and improper computation of value.

We are very pleased with the excellent work done on behalf of the people, by the prosecution team representing the Santa Cruz County, Santa Clara County, Sonoma County and Santa Barbara County District Attorney's Offices as well as the State and county investigators that tested these products. SIREA, Inc. was assessed \$308,244 in civil penalties, costs, restitution and cy pres restitution. \$51,293.61 was for all investigative costs and \$25,000 in cy pres restitution was paid to the California Agriculture Commissioner and Sealer's Association's Quantity Control Trust Fund. This fund is used to benefit the citizens of the State of California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity control cases. Santa Cruz County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Edmund E. Williams

Cc PQV Special Investigators



1 BOB LEE,  
2 District Attorney, County of Santa Cruz  
3 William Atkinson (SBN 88933)  
4 Assistant District Attorney  
5 701 Ocean Street, Room 200  
6 Santa Cruz, CA 95060  
7 Tel: (831) 454-2400  
8 Fax: (831) 454-2227

**FILED**  
SEP 29 2009

ALEX CALVO, CLERK  
BY MICHELLE IRIS  
DEPUTY, SANTA CRUZ COUNTY

(For list of additional plaintiff's counsel,  
see attached Exhibit 1)

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
Plaintiff, )  
-vs- )  
SIREA, INC., and Does 1 through 10, )  
Defendant(s). )

CASE NO. CV 165347

COMPLAINT FOR CIVIL  
PENALTIES AND  
EQUITABLE RELIEF

Business and  
Professions Code §  
17200 & 17500

INTRODUCTION

The People of the State of California, by and through Bob Lee,  
District Attorney for the County of Santa Cruz, Christie Stanley,  
District Attorney for the County of Santa Barbara, Stephan  
Passalacqua, District Attorney for the County of Sonoma and Dolores  
Carr, District Attorney for the County of Santa Clara, allege on  
information and belief the following:

JURISDICTION AND VENUE

1. The District Attorneys' authority to bring this action is  
derived from the statutory law of the State of California,

including but not limited to, Business and Professions Code sections 17203, 17204, 17206, 17535 and 17536.

2. Plaintiff is informed and believes and thereon alleges that Defendants have transacted and continue to transact business within the County of Santa Cruz and elsewhere within the State of California and that the violations of law described below have been carried out within the County of Santa Cruz and elsewhere in the State of California. Unless enjoined by an Order of the Court, Defendants will continue to engage in the unlawful acts, practices and courses of conduct set forth below.

**DEFENDANTS**

3. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, defendant Sirea, Inc. (hereinafter referred to as "Sirea") was a corporation, doing business in Santa Cruz County and elsewhere throughout the State of California. Sirea's principal address in California is located at 140 S. Montgomery St. San Jose, CA 94560.

4. DOES 1 through 10 are business entities, organizations, and or individuals who engaged in, furthered, encouraged, promoted, authorized, ratified, participated in, or are otherwise responsible in some manner for the events, transactions and activities described below. The true names and capacities of DOES 1 through 10 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to reflect the true names and capacities of DOES 1 through 10 when their true identities have been ascertained.

5. Plaintiff is informed and believes and thereon alleges that each defendant is/was the officer, agent, employee, partner, or

1 representative of each of the remaining defendants acting within the  
2 course and scope of the agency, employment, partnership, conspiracy  
3 or representation and each defendant has ratified and approved the  
4 actions of each of the other defendants alleged herein.

5 6. Whenever, in this complaint, reference is made to any act  
6 of Defendants, such allegations shall be deemed to mean the act of  
7 each defendant acting individually and jointly with the other  
8 defendants named in that cause of action.

9 7. Plaintiff is informed and believes that each named Doe  
10 Defendant is responsible in some manner for the acts, occurrences and  
11 liability hereinafter alleged and referred to.

12 8. Whenever, in this complaint, reference is made to any act  
13 of a Defendant, such allegation shall be deemed to mean the act of  
14 each Defendant, acting individually, jointly and severally.

15 **FIRST CAUSE OF ACTION**

16 **(Business and Professions Code § 17200)**

17 9. Plaintiff realleges and incorporates herein by reference all  
18 allegations contained in paragraphs 1 through 8 of this complaint as  
19 though fully set forth herein.

20 10. Beginning at an exact date unknown to Plaintiff, but at  
21 least within four years prior to the filing of this complaint,  
22 defendants, and each of them, engaged in a course of conduct  
23 constituting acts of unfair competition, as defined by Business and  
24 Professions Code §17200, including but not limited to the following:

25 (a) Selling or offering for sale compressed gas products having  
26 a quantity net weight that is less than as represented on the  
27 package, cylinder or container, or as represented elsewhere in  
28 violation of Business and Professions Code § 12024.

1 (b) Failing to insure that all commercial weighing and measuring  
2 devices conform to the latest requirements set forth in the  
3 National Institute of Standards and Technology Handbook 44,  
4 "Specifications, Tolerances and Other Technical Requirements for  
5 Weighing and Measuring Devices".

6 (c) Charging at the time of sale of a commodity an amount  
7 greater than the lowest price that is advertised, posted, marked,  
8 displayed or quoted for that item in violation of Business and  
9 Professions Code §12024.2.

10 (d) Selling or distributing compressed gas products without the  
11 a proper label in violation of Business and Professions Code  
12 §12603.

13 (e) Selling or distributing compressed gas products without a  
14 statement of net quantity appearing thereon in violation of  
15 Business and Professions Code § 12607.

16 (f) Violating Business and Professions Code § 17500 by  
17 committing acts as described in the Second Cause of Action  
18 herein.

19  
20 **SECOND CAUSE OF ACTION**

21 **(Business and Professions Code § 17500)**

22 11. Plaintiff realleges and incorporates herein by reference all  
23 allegations contained in paragraphs 1 through 10 as though fully set  
24 forth herein.

25 12. Beginning on an exact date unknown to Plaintiff, but at  
26 least within the last three years prior to the filing of the complaint  
27 herein and continuing to the present, defendants have made untrue or  
28 misleading representations in the course of packaging and selling

1 compressed gas products by representing that the cylinders contained  
2 amounts of gas greater than the actual quantity contained within the  
3 cylinders.

4 .

5 **DEMAND FOR RELIEF**

6 **WHEREFORE**, plaintiff prays that:

7 1. Defendants be preliminarily and permanently restrained and  
8 enjoined from engaging in any act constituting unfair or unlawful  
9 competition as defined in Business and Professions Code §§17200 and  
10 17500 including but not limited to the acts set forth in paragraphs  
11 10 and 12, above, as provided pursuant to Business and Professions  
12 Code §§17203, 17204 and 17535.

13 2. Defendants be assessed a civil penalty of TWO THOUSAND FIVE  
14 HUNDRED DOLLARS (\$2,500.00) for each act of unfair or unlawful  
15 competition as defined by Business and Professions Code § 17200  
16 pursuant to Business and Professions Code § 17206.

17 3. Defendants be assessed a civil penalty of TWO THOUSAND FIVE  
18 HUNDRED DOLLARS (\$2,500.00) for each violation of Business and  
19 Professions Code § 17500 pursuant to Business and Professions Code  
20 § 17536.

21 4. Defendants be ordered to make full and complete restitution  
22 to all victims of defendant's acts of unfair competition.


23 5. Plaintiff recover its costs of suit, including but not  
24 limited to, costs of investigation, pursuant to Business and  
25 Professions Code § 17206.

26 6. Plaintiff have such other and further relief as the nature  
27 of this case requires and that this Court may deem just and proper.

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1 Dated: September 29, 2009  
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BOB LEE  
DISTRICT ATTORNEY

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6 By:   
7 WILLIAM R. ATKINSON  
8 Assistant District Attorney  
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## **EXHIBIT 1**

### **CHRISTIE STANLEY**

District Attorney, County of Santa Barbara  
Allan Kaplan (SBN 76946)  
Deputy District Attorney  
1112 Santa Barbara St.  
Santa Barbara, CA 93101  
Telephone: (805) 568-2300

### **STEPHAN PASSALACQUA**

District Attorney, County of Sonoma  
Matthew T. Cheever (SBN 191783)  
Deputy District Attorney  
2300 County Center Dr.  
Suite B-170  
Santa Rosa, CA 95403  
Telephone: (707) 565-3161

### **DOLORES CARR**

District Attorney, County of Santa Clara  
Matthew Harris (SBN 136462)  
Deputy District Attorney  
70 W. Hedding St. West Wing  
San Jose, CA 95110  
Telephone: (408) 299-7500



1 BOB LEE, DISTRICT ATTORNEY  
2 WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY  
3 STATE BAR NUMBER 88933  
4 COUNTY OF SANTA CRUZ  
5 701 OCEAN STREET, ROOM 200  
6 SANTA CRUZ CALIFORNIA 95060  
7 TELEPHONE: (831) 454-2400

FILED

SEP 29 2009

ALEX CALVO, CLERK  
BY MICHELLE IRIS  
DEPUTY, SANTA CRUZ COUNTY

ATTORNEYS FOR THE PEOPLE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF CALIFORNIA, )

NO. CV165347

11 Plaintiff, )

STIPULATION FOR ENTRY  
OF FINAL JUDGMENT

12 -vs- )

13 SIREA INC. (formerly known as AERIS )  
14 INC.), )

15 Defendant. )

16 Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District  
17 Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R.  
18 Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District  
19 Attorney, Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan Deputy  
20 District Attorney, Delores Carr, District Attorney of Santa Clara County, by Matt Harris Deputy  
21 District Attorney, and Defendant, Sirea Inc., (formerly known as Aeris, Inc.) appearing through its  
22 attorneys the Hannig Law Firm, LLP, by John H. Blake and Daniel Guerra its President hereby  
23 stipulate and agree as follows:

24 1. That the proposed Final Judgment, a copy of which is attached hereto as Exhibit 1, and by  
25 this reference made a part hereof, may be signed by any judge of the Superior Court of the State of  
26 California, for the County of Santa Cruz, and entered by the clerk without notice, provided that this  
27 Stipulation for Entry of Final Judgment has been executed by counsel and the parties listed below;

28 ///

2. That Defendant acknowledges that it has been represented by legal counsel throughout all of the negotiations which preceded the execution of this stipulation and that it has executed this stipulation with the consent and on the advice of such counsel.

3. That Defendant waives its right to appeal or attempt to set aside or vacate the Final Judgment entered pursuant to this Stipulation;

4. That the parties consent to the entry of the Final Judgment prior to the taking of any proof, without trial or adjudication of any issues of law or fact and without this Stipulation for Entry of Final Judgment substituting evidence or an admission of liability or wrongdoing by SIREA, Inc;

5. That the complaint on file in the above-captioned action states facts sufficient to constitute a cause of action upon which relief may be granted;


6. That SIREA, Inc. agrees to be bound as of the date of the Court's signing of the Final Judgment in the form attached as Exhibit 1 and that the signatures of this Stipulation on behalf of SIREA, Inc. constitute notice to SIREA, Inc. of the Final Judgment and all of its terms and SIREA, Inc. waives any further notice or service of the Final Judgment;

7. That this Stipulation may be executed in counterparts and be facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**PLAINTIFF**

Dated: 9.28.09

Bob Lee  
Santa Cruz County District Attorney

By:   
William Atkinson  
Assistant District Attorney

1 Dated: 9/22/09

Stephan R. Passalacqua  
Sonoma County District Attorney

4 By: Matthew T. Cheever

Matthew T. Cheever  
Deputy District Attorney

8 Dated: \_\_\_\_\_

Christie Stanley  
Santa Barbara County District Attorney

11 By: \_\_\_\_\_

Allan Kaplan  
Deputy District Attorney

15 Dated: \_\_\_\_\_

Delores Carr  
Santa Clara County District Attorney

18 By: \_\_\_\_\_

Matt Harris  
Deputy District Attorney

21 **DEFENDANT**

23 Dated: \_\_\_\_\_

Hannig Law Firm LLP

25 By: \_\_\_\_\_

John H. Blake  
Attorney for Defendant  
Sirea, Inc.

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Dated: \_\_\_\_\_

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Dated: 8/31/09

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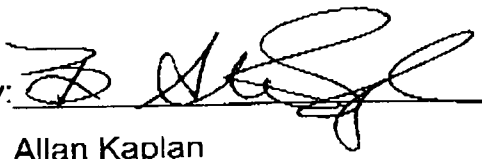
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By: \_\_\_\_\_

William Atkinson  
Assistant District AttorneyStephan R. Passalacqua  
Sonoma County District Attorney

By: \_\_\_\_\_

Matthew T. Cheever  
Deputy District AttorneyChristie Stanley  
Santa Barbara County District AttorneyBy:  \_\_\_\_\_Allan Kaplan  
Deputy District AttorneyDelores Carr  
Santa Clara County District Attorney

By: \_\_\_\_\_

Matt Harris  
Deputy District Attorney**DEFENDANT**

1 Dated: \_\_\_\_\_  
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Stephan R. Passalacqua  
Sonoma County District Attorney

4 By: \_\_\_\_\_  
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Matthew T. Cheever  
Deputy District Attorney  
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8 Dated: \_\_\_\_\_  
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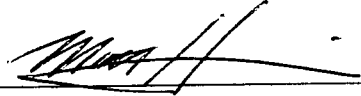
Christie Stanley  
Santa Barbara County District Attorney  
10

11 By: \_\_\_\_\_  
12

Allan Kaplan  
Deputy District Attorney  
13

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15 Dated: 8/31/07  
16

Delores Carr  
Santa Clara County District Attorney

17 By:  \_\_\_\_\_  
18

Matt Harris  
Deputy District Attorney  
19

20  
21 **DEFENDANT**  
22

23 Dated: \_\_\_\_\_  
24

Hannig Law Firm LLP

25 By: \_\_\_\_\_  
26

John H. Blake  
Attorney for Defendant  
Sirea, Inc.  
27  
28

1 Dated: \_\_\_\_\_  
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Stephan R. Passalacqua  
Sonoma County District Attorney

4 By: \_\_\_\_\_  
5

Matthew T. Cheever  
Deputy District Attorney  
6  
7

8 Dated: \_\_\_\_\_  
9

Christie Stanley  
Santa Barbara County District Attorney  
10

11 By: \_\_\_\_\_  
12

Allan Kaplan  
Deputy District Attorney  
13  
14

15 Dated: \_\_\_\_\_  
16

Delores Carr  
Santa Clara County District Attorney  
17

18 By: \_\_\_\_\_  
19

Matt Harris  
Deputy District Attorney  
20

21 **DEFENDANT**

22  
23 Dated: 9-14-09  
24

Hannig Law Firm LLP

25 By: William W. Wadsworth for  
26

John H. Blake  
Attorney for Defendant  
Sirea, Inc.  
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Dated: 9-9-09

Sirea, Inc.  
Defendant

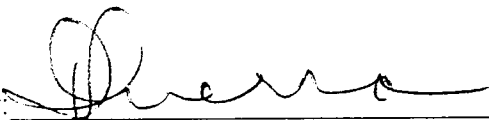
By:   
Daniel Guerra - President

EXHIBIT "1"

BOB LEE, DISTRICT ATTORNEY  
WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY  
STATE BAR NUMBER 88933  
COUNTY OF SANTA CRUZ  
701 OCEAN STREET, ROOM 200  
SANTA CRUZ CALIFORNIA 95060  
TELEPHONE: (831) 454-2400

ATTORNEYS FOR THE PEOPLE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Plaintiff,	)	FINAL JUDGMENT
	)	PURSUANT TO
	)	STIPULATION
-vs-	)	
	)	
SIREA INC., (formerly known as AERIS	)	
INC.),	)	
	)	
<u>Defendant.</u>	)	

Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R. Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney, Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan, Deputy District Attorney, Delores Carr, District Attorney of Clara County, by Matt Harris, Deputy District Attorney, and Defendant, Sirea, Inc. (formerly known as Aeris, Inc.) appearing through its attorneys the Hannig Law Firm LLP, by John H. Blake and Daniel Guerra, its President. It appears to the Court that this final judgment is a final resolution of this matter, that the parties hereto have stipulated and consented to the entry of this final judgment without the taking of proof, that this final judgment does not constitute evidence or an admission by defendants regarding any issue of fact alleged in the complaint, and the Court having considered the matter and good cause appearing therefore,

///



1  
2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

3 1. This Court has jurisdiction of the subject matter hereof and of the parties hereto.

4 2. This judgment is applicable to defendant Sirea, Inc., a California corporation, and to each  
5 of its officers, directors, agents, servants, employees, representatives, managers, and to all persons,  
6 employees, and other entities who are acting in concert or participating with defendant, with actual  
7 or constructive notice of this judgment (hereinafter referred to as "Defendants").

8 **PERMANENT INJUNCTION**

9 3. Pursuant to Business & Professions Code §§17203, 17204 and 17535 Defendants are  
10 hereby enjoined and restrained from doing, directly or indirectly, any of the following:

11 (A) Selling or offering for sale compressed gas products having a quantity or net weight that  
12 is less than as represented on the package, cylinder or container, or as represented elsewhere in a  
13 location intended, or likely, to be displayed to any consumer or potential consumer.

14 (B) Failing to insure that all commercial weighing and measuring devices conform to the  
15 latest requirements set forth in the National Institute of Standards and Technology Handbook 44,  
16 "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring  
17 Devices," except where otherwise noted in Title 4, Division 9 of the California Code of Regulations,  
18 as required by 4 CCR §4000.

19 (C) Making any misleading or untrue statement, or failing to disclose any material fact, in  
20 violation of Business and Professions Code section 17500 with respect to any insurance surcharge,  
21 or net-weight statement on any package, cylinder or container of any compressed gas packaged or  
22 sold by the Defendant.

23 (D) Charging at the time of sale of a commodity an amount greater than the lowest price that  
24 is advertised, posted, marked, displayed or quoted for that item in violation of Business and  
25 Professions Code section 12024.2.

26 (E) Advertising, soliciting, or representing by any means, a product for sale or purchase if  
27 it is intended to entice a consumer into a transaction different from that originally represented in  
28 violation of Business and Professions Code section 12024.6.

1 (F) Selling or distributing any compressed gas product without a proper label in violation of  
2 Business and Professions Code section 12603.

3 (G) Selling, offering for sale, or exposing for sale any compressed gas product without a  
4 statement of net quantity appearing thereon in violation of Business and Professions Code section  
5 12607.

6 (H) Failing, while engaged in the packaging, selling or distributing of any packaged or  
7 labeled compressed gas product, to establish and maintain adequate controls and procedures  
8 reasonably designed to achieve compliance with Business and Professions Code  
9 sections 17200, 17500, 12024 and 12600, et seq., such controls and procedures to include reasonable  
10 check-fill protocols (to achieve accuracy in filling, packaging and labeling) and other reasonable  
11 quality-control protocols.

#### 12 MONETARY RELIEF

13 4. Pursuant to Business and Professions Code sections 17203 and 17536, Defendant shall  
14 on or before the date of the approval of this Judgment, pay civil penalties, costs, restitution and *cy*  
15 *pres* restitution in the total amount of \$308,244.00. Said payment shall be made in the form of a  
16 certified check made payable to the Santa Cruz District Attorney, and delivered to William Atkinson,  
17 Santa Cruz District Attorney's Office, 701 Ocean St., Room 200, Santa Cruz, CA 95060 and shall  
18 be delivered and distributed by the Santa Cruz District Attorney as follows:

19 A. Civil penalties in the amount of \$231,595.39, in equal amounts to the District  
20 Attorney's Office of Santa Clara, Santa Barbara, Sonoma and Santa Cruz.

21 B. \$355.00 payable to the clerk of the court for Defendant's filing fees.

22 C. Costs of fifty one thousand two hundred ninety three dollars 61/100 (\$51,293.61),  
23 to the following state and local regulatory and law enforcement agencies that contributed resources  
24 to this investigation:

Santa Clara County Agricultural Commissioner	\$3,771.17
San Luis Obispo County Agricultural Commissioner	\$1,320.00
Sonoma County Agricultural Commissioner	\$5,984.00
Santa Cruz County Agricultural Commissioner	\$1,820.00

1	Mendocino County Agricultural Commissioner	\$1,186.20
2	California Division of Measurement Standards	<u>\$37,212.34</u>
3	Total:	\$51,293.61

4 C. *Cy Pres* restitution: The parties having recognized the impossibility of identifying  
5 aggrieved consumers who suffered actual loss, and the impracticality of providing direct restitution  
6 to said consumers, and the disproportionate cost of making restitution to individual consumers which  
7 would far exceed the benefit consumers would gain, the Court therefore orders that *cy pres*  
8 restitution, in the amount of \$25,000.00, shall be paid to the California Agricultural Commissioner  
9 and Sealer's Association's Quantity Control Trust Fund established pursuant to the Judgment in the  
10 *People of the State of California v. Safeway Inc., et al*, Sonoma County Superior Court, Case No.  
11 233008 filed July 7, 2003. This *cy pres* restitution is intended to benefit the citizens of the State of  
12 California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity-  
13 control case.

14 5. Jurisdiction is retained so that the injunctive provisions of the Final Judgment may be  
15 modified, as appropriate, upon application by either party, for the purpose of conforming them to any  
16 addition, modification, deletion or other change to Division 5, Chapter 6, Section 12601, *et seq.*, of  
17 the Business and Professions Code cited as and commonly known as the California "Fair Packaging  
18 and Labeling Act," or any successor statute, or any provision of the California Code of Regulations  
19 adopted pursuant to said act, or for the purpose of conforming them to any provision of the United  
20 States Code or Code of Federal Regulations which may supercede California law or regulation  
21 pursuant to the Supremacy Clause of the United States Constitution.

22 6. Jurisdiction is further retained for the purpose of enabling either party to apply to the Court  
23 for such further orders, directions, modifications or terminations as may be necessary or appropriate  
24 for the construction, carrying out, modification, or termination of any of the injunctive provisions  
25 of this Final Judgment, for the enforcement of compliance herewith; or for punishment of violations  
26 hereunder; except that Defendant shall not apply for a termination of the injunctive portion of this  
27 Final Judgment at any time prior to the expiration of five (5) years from the date of execution of this  
28 Final Judgment.

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7. Plaintiff's failure to seek enforcement of any provisions of this Final Judgment shall in no way be deemed a waiver of such provision, nor in any way affect the validity of this Final Judgment or any term thereof. Plaintiff's failure to seek to enforce any such provision shall not preclude or estop Plaintiff from later seeking to enforce the same or any other provision of this Final Judgment.

8. This Final Judgment shall take effect immediately upon entry hereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

1 BOB LEE, DISTRICT ATTORNEY  
2 WILLIAM R. ATKINSON, ASSISTANT DISTRICT ATTORNEY  
3 STATE BAR NUMBER 88933  
4 COUNTY OF SANTA CRUZ  
5 701 OCEAN STREET, ROOM 200  
6 SANTA CRUZ CALIFORNIA 95060  
7 TELEPHONE: (831) 454-2400

8 ATTORNEYS FOR THE PEOPLE

FILED  
SEP 29 2009

ALEX CALVO, CLERK  
BY MICHELLE IRIS  
DEPUTY, SANTA CRUZ COUNTY

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SANTA CRUZ

11 THE PEOPLE OF THE STATE OF CALIFORNIA, )

12 Plaintiff, )

13 -vs- )

14 SIREA INC., (formerly known as AERIS )  
15 INC.), )

16 Defendant. )

CV165347

FINAL JUDGMENT  
PURSUANT TO  
STIPULATION

17 Plaintiff, the People of the State of California, appears through its attorneys, Bob Lee, District  
18 Attorney of Santa Cruz County, by William Atkinson, Assistant District Attorney, Stephan R.  
19 Passalacqua, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney,  
20 Christie Stanley, District Attorney of Santa Barbara County, by Allan Kaplan, Deputy District  
21 Attorney, Delores Carr, District Attorney of Clara County, by Matt Harris, Deputy District Attorney,  
22 and Defendant, Sirea, Inc. (formerly known as Aeris, Inc.) appearing through its attorneys the  
23 Hannig Law Firm LLP, by John H. Blake and Daniel Guerra, its President. It appears to the Court  
24 that this final judgment is a final resolution of this matter, that the parties hereto have stipulated and  
25 consented to the entry of this final judgment without the taking of proof, that this final judgment does  
26 not constitute evidence or an admission by defendants regarding any issue of fact alleged in the  
27 complaint, and the Court having considered the matter and good cause appearing therefore,

28 ///

1  
2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

3 1. This Court has jurisdiction of the subject matter hereof and of the parties hereto.

4 2. This judgment is applicable to defendant Sirea, Inc., a California corporation, and to each  
5 of its officers, directors, agents, servants, employees, representatives, managers, and to all persons,  
6 employees, and other entities who are acting in concert or participating with defendant, with actual  
7 or constructive notice of this judgment (hereinafter referred to as "Defendants").

8 **PERMANENT INJUNCTION**

9 3. Pursuant to Business & Professions Code §§17203, 17204 and 17535 Defendants are  
10 hereby enjoined and restrained from doing, directly or indirectly, any of the following:

11 (A) Selling or offering for sale compressed gas products having a quantity or net weight that  
12 is less than as represented on the package, cylinder or container, or as represented elsewhere in a  
13 location intended, or likely, to be displayed to any consumer or potential consumer.

14 (B) Failing to insure that all commercial weighing and measuring devices conform to the  
15 latest requirements set forth in the National Institute of Standards and Technology Handbook 44,  
16 "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring  
17 Devices," except where otherwise noted in Title 4, Division 9 of the California Code of Regulations,  
18 as required by 4 CCR §4000.

19 (C) Making any misleading or untrue statement, or failing to disclose any material fact, in  
20 violation of Business and Professions Code section 17500 with respect to any insurance surcharge,  
21 or net-weight statement on any package, cylinder or container of any compressed gas packaged or  
22 sold by the Defendant.

23 (D) Charging at the time of sale of a commodity an amount greater than the lowest price that  
24 is advertised, posted, marked, displayed or quoted for that item in violation of Business and  
25 Professions Code section 12024.2.

26 (E) Advertising, soliciting, or representing by any means, a product for sale or purchase if  
27 it is intended to entice a consumer into a transaction different from that originally represented in  
28 violation of Business and Professions Code section 12024.6.

1 (F) Selling or distributing any compressed gas product without a proper label in violation of  
2 Business and Professions Code section 12603.

3 (G) Selling, offering for sale, or exposing for sale any compressed gas product without a  
4 statement of net quantity appearing thereon in violation of Business and Professions Code section  
5 12607.

6 (H) Failing, while engaged in the packaging, selling or distributing of any packaged or  
7 labeled compressed gas product, to establish and maintain adequate controls and procedures  
8 reasonably designed to achieve compliance with Business and Professions Code  
9 sections 17200, 17500, 12024 and 12600, et seq., such controls and procedures to include reasonable  
10 check-fill protocols (to achieve accuracy in filling, packaging and labeling) and other reasonable  
11 quality-control protocols.

#### 12 MONETARY RELIEF

13 4. Pursuant to Business and Professions Code sections 17203 and 17536, Defendant shall  
14 on or before the date of the approval of this Judgment, pay civil penalties, costs, restitution and *cy*  
15 *pres* restitution in the total amount of \$308,244.00. Said payment shall be made in the form of a  
16 certified check made payable to the Santa Cruz District Attorney, and delivered to William Atkinson,  
17 Santa Cruz District Attorney's Office, 701 Ocean St., Room 200, Santa Cruz, CA 95060 and shall  
18 be delivered and distributed by the Santa Cruz District Attorney as follows:

19 A. Civil penalties in the amount of \$231,595.39, in equal amounts to the District  
20 Attorney's Office of Santa Clara, Santa Barbara, Sonoma and Santa Cruz.

21 B. \$355.00 payable to the clerk of the court for Defendant's filing fees.

22 C. Costs of fifty one thousand two hundred ninety three dollars 61/100 (\$51,293.61),  
23 to the following state and local regulatory and law enforcement agencies that contributed resources  
24 to this investigation:

25	Santa Clara County Agricultural Commissioner	\$3,771.17
26	San Luis Obispo County Agricultural Commissioner	\$1,320.00
27	Sonoma County Agricultural Commissioner	\$5,984.00
28	Santa Cruz County Agricultural Commissioner	\$1,820.00

1	Mendocino County Agricultural Commissioner	\$1,186.20
2	California Division of Measurement Standards	<u>\$37,212.34</u>
3	Total:	\$51,293.61

4 C. *Cy Pres* restitution: The parties having recognized the impossibility of identifying  
5 aggrieved consumers who suffered actual loss, and the impracticality of providing direct restitution  
6 to said consumers, and the disproportionate cost of making restitution to individual consumers which  
7 would far exceed the benefit consumers would gain, the Court therefore orders that *cy pres*  
8 restitution, in the amount of \$25,000.00, shall be paid to the California Agricultural Commissioner  
9 and Sealer's Association's Quantity Control Trust Fund established pursuant to the Judgment in the  
10 *People of the State of California v. Safeway Inc., et al*, Sonoma County Superior Court, Case No.  
11 233008 filed July 7, 2003. This *cy pres* restitution is intended to benefit the citizens of the State of  
12 California by aiding in the training, investigation and prosecution of pricing-accuracy and quantity-  
13 control case.

14 5. Jurisdiction is retained so that the injunctive provisions of the Final Judgment may be  
15 modified, as appropriate, upon application by either party, for the purpose of conforming them to any  
16 addition, modification, deletion or other change to Division 5, Chapter 6, Section 12601, *et seq.*, of  
17 the Business and Professions Code cited as and commonly known as the California "Fair Packaging  
18 and Labeling Act," or any successor statute, or any provision of the California Code of Regulations  
19 adopted pursuant to said act, or for the purpose of conforming them to any provision of the United  
20 States Code or Code of Federal Regulations which may supercede California law or regulation  
21 pursuant to the Supremacy Clause of the United States Constitution.

22 6. Jurisdiction is further retained for the purpose of enabling either party to apply to the Court  
23 for such further orders, directions, modifications or terminations as may be necessary or appropriate  
24 for the construction, carrying out, modification, or termination of any of the injunctive provisions  
25 of this Final Judgment, for the enforcement of compliance herewith; or for punishment of violations  
26 hereunder; except that Defendant shall not apply for a termination of the injunctive portion of this  
27 Final Judgment at any time prior to the expiration of five (5) years from the date of execution of this  
28 Final Judgment.



7. Plaintiff's failure to seek enforcement of any provisions of this Final Judgment shall in no way be deemed a waiver of such provision, nor in any way affect the validity of this Final Judgment or any term thereof. Plaintiff's failure to seek to enforce any such provision shall not preclude or estop Plaintiff from later seeking to enforce the same or any other provision of this Final Judgment.

8. This Final Judgment shall take effect immediately upon entry hereof.

Date: 9.29.09

**JEFF ALMQUIST**

Judge of the Superior Court